

Exhibit K

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

No. 2:18cv530

CSX TRANSPORTATION, INC.,
individually and on behalf
of NORFOLK & PORTSMOUTH BELT
LINE RAILROAD COMPANY,
Plaintiff,

v.

NORFOLK SOUTHERN RAILWAY COMPANY,
et al.,
Defendants.

Remote Proceedings

January 13, 2021

9:38 a.m. - 6:40 p.m.

VIDEO DEPOSITION OF ROBERT GIRARDOT
(via Teleconference)

Taken before SUZANNE VITALE, R.P.R., F.P.R.
and Notary Public for the State of Florida at Large,
pursuant to Notice of Taking Deposition filed in the
above cause.

Job No. CS4395739

1 rate approved, you had to go to a rate committee.

2 Q. But CSX understood that it could call a
3 special board meeting if it wanted to, to seek
4 approval of its 2010 proposals, right?

5 A. They -- they -- they understood that, in
6 the absence of getting a simple rate proposal, an
7 operating proposal approved, you know, they
8 recognized that even that is kind of a very
9 unusual -- a very unusual hurdle for something that
10 simple.

11 But in the case of, you know -- that was
12 an unusual barrier. But in the case of not being
13 able to get this very straightforward proposal
14 approved even by the rate committee, that that was
15 kind of the only remedy, to take a -- take a simple
16 rate issue all the way up to the board of directors.
17 Yeah, that was basically the only remedy.

18 Q. So your testimony is that CSX's rate
19 proposal in 2010 would not need board approval?

20 A. No, it wouldn't need the board approval,
21 no.

22 Q. But the plan was to take it to the board,
23 right?

24 MR. HATCH: Objection, asked and answered
25 and misstates the testimony.

1 before?

2 A. No, I have not.

3 Q. Were you aware that a document known as
4 "Reference Guide for Affiliate Board Service"
5 existed?

6 A. You know, there's just so many documents
7 involved with this. So this is one I was not aware
8 of.

9 Q. Okay. I'd like to turn to page -- the
10 numbered page 3 of the reference guide, which is
11 Bates numbered CSXT0154800.

12 A. Go to page 3 or section 3?

13 Q. Section 2. The number at the bottom is 3,
14 but there's also a Bates number, 800.

15 A. Okay. All right. I got the right -- I
16 got the right page. You're going to ask me
17 questions, so I'd like to ask to have time to review
18 the whole page.

19 Q. I'm referencing specifically language that
20 appears in the middle of the page. It says "A board
21 of directors should scrutinize and approve major
22 decisions such as: Major contracts/transactions."

23 Do you see that?

24 A. Yes, I see that.

25 Q. As a general proposition, would you agree

1 that for a shortline railroad, that the board of
2 directors should scrutinize and approve major
3 decisions such as major contracts and transactions?

4 MR. HATCH: I'm going to object to that.

5 As a general proposition, that's vague and
6 calls for an opinion, and I think it's also
7 outside any of the 30(b)(6) topics.

8 But if you understand, Rob, you can
9 answer.

10 THE WITNESS: Well, I mean, it says, you
11 know, that. You read what it says. So I would
12 view this in the context of, you know, the
13 board should supervise what management is
14 doing. It doesn't necessarily mean ahead of --
15 beforehand.

16 Certainly -- so, you know, this wouldn't
17 mean to me that, before you made any, you know,
18 you made any -- the president of a railroad
19 could easily -- could even go up to the
20 president's level, could easily be able to make
21 a decision on a rate.

22 I mean, I think it's -- are you trying to
23 say that this says that if someone is making a
24 rate proposal to the railroad, that it should
25 go to the board of directors to be approved?

1 Is that what you're asking?

2 BY MR. WINGFIELD:

3 Q. Well, let's put it more sharply.

4 Do you think that CSX's rate proposal in
5 2010 should have gone to the board to be scrutinized
6 and approved as a major contract or transaction for
7 NPBL?

8 A. No, I don't think it -- I don't think it
9 was something that really needed to go up to the
10 board of directors, no.

11 I think that was an artificial hurdle
12 that -- that was placed to obstruct reaching a
13 reasonable commercial contract that would vastly
14 increase the amount of business on NPBL.

15 Q. Your testimony is that a -- the proposal
16 for CSXT would vastly increase the revenue for NPBL,
17 right?

18 A. That's right.

19 Q. But it's not necessary to take a contract
20 or vastly increased revenue to the board, in your
21 view, right?

22 A. I don't think that's necessary, no.

23 Q. Obviously, since you've never seen it
24 before, the reference guide, you didn't draft this,
25 right?

1 A. No, I did not.

2 Q. You've never seen it before, right?

3 A. That's correct.

4 Q. So are you able to explain to me how I'm
5 supposed to reconcile the language in the reference
6 guide against your testimony as to how things should
7 work at NPBL?

8 MR. HATCH: I'm going to object to that as
9 argumentative.

10 You can answer if you can, Rob.

11 THE WITNESS: I just think that, you know,
12 it would be very unusual in a company that a
13 rate decision that was so clear like this, was
14 simple, it would have to be approved by a board
15 of directors, unless the purpose of that was to
16 obstruct growing the business.

17 BY MR. WINGFIELD:

18 Q. Could taking a decision that would vastly
19 increase the revenues of NPBL to the board be simply
20 a matter of good basic corporate governance?

21 MR. HATCH: I'm going to object,
22 hypothetical, asked for an opinion.

23 THE WITNESS: I think that the president
24 already has the approval and scrutiny of the
25 board of directors. They were given

1 instructions by the board of directors to go
2 out and find more business to increase revenue.

3 That's what this proposal did. They
4 already had approval. You didn't need to have
5 a board meeting to do that.

6 BY MR. WINGFIELD:

7 Q. Isn't it true that the 2010 rate proposal
8 from CSX was never actually presented to the board
9 for a vote?

10 A. You know, I'd have to look at the -- you
11 know, that's a very specific question. I know --

12 Q. It's proving a negative, right?

13 MR. HATCH: I think the witness was still
14 finishing his answer. If you could allow him
15 to finish, please.

16 THE WITNESS: Could we look at the board
17 minutes together?

18 BY MR. WINGFIELD:

19 Q. If I had an infinite amount of time with
20 you, we could because what we need to do is examine
21 a whole set of the minutes, meeting by meeting, and
22 see that there's no proposal, no vote, right?

23 What I'm struggling with is there's no
24 evidence that there ever was a vote on it.

25 So I'm just asking you, are you aware of

1 Based on your knowledge, based on your
2 preparation for this deposition or any other source,
3 are you aware of some other spreadsheet or similar
4 kind of document that would tie in to and support
5 the numbers that appear in the rate proposal?

6 A. No. Again, I think, you know, we have a
7 lot of experience as to what are attractive rates to
8 shortlines, and this would be attractive to any
9 other shortline that I deal with.

10 Q. Okay. I want to go back to Girardot
11 Exhibit Number 6, which would be your tab 94.

12 A. Okay.

13 Q. In front of you is the printout from the
14 CSXT portal regarding Norfolk & Portsmouth Belt Line
15 Railroad Company Virginia entity vitals.

16 Do you see that?

17 A. Yes.

18 Q. So if you'll look down below business
19 purpose, this is number 1, and it says "Subject to
20 STB oversight?"

21 Do you see that?

22 A. Yes, I do.

23 Q. And the answer given to that is yes,
24 right?

25 A. Yes.

1 Q. And STB, in railroad world, is the
2 Surface Transportation Board?

3 A. That's correct, yes.

4 Q. Is it true that the Surface Transportation
5 Board can handle disputes over rates involving
6 railroads within its jurisdiction?

7 A. Yes.

8 Q. If CSXT did not like the rates charged by
9 NPBL for its movement to NIT, it could have sought a
10 remedy with the STB, right?

11 MR. HATCH: Objection, calls for a legal
12 conclusion.

13 THE WITNESS: That's one, you know, that I
14 can't -- I think -- I'd say I -- I mean, you
15 want me to take a shot at it, Ben? I mean, you
16 know, I'm not an STB lawyer.

17 MR. HATCH: I guess, if you know the
18 answer, you can answer.

19 THE WITNESS: I think that -- you know,
20 our problem here wasn't just the rate. It was,
21 you know, all of the other behavior that went
22 along with the board behavior and the lack of,
23 you know, exercising their fiduciary duties and
24 the conspiracy between Norfolk Southern and
25 NPBL to block us to get out there that was --

1 that was the issue, and I don't think those are
2 issues that are within the STB's oversight.

3 BY MR. WINGFIELD:

4 Q. Considering that CSXT did not even ask the
5 board to vote on the 2018 rate proposal, what did
6 the board of NPBL do to block that?

7 A. I -- you know, I think it shows that the
8 rate proposal was discussed at the board. And I
9 think it's telling that it's not a big, huge
10 highlight on the board meeting minutes, you know, a
11 pickup of this much business.

12 I think that's -- but I think -- so, I
13 mean, that's one example. I think the board -- I
14 don't think that something like that needed to be
15 voted on by the board.

16 I think after they had that discussion,
17 they would have said go forth and conquer, go get
18 this new business.

19 Q. Is CSXT complaining about something the
20 board didn't do, that is, didn't cheerlead the
21 proposal?

22 MR. HATCH: Alan, could you state the
23 question again? I didn't hear it all.

24 BY MR. WINGFIELD:

25 Q. Is CSXT's complaint about the handling of